

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Case No.: 5:20-cv-00157-KDB-DCK

CURTIS EDWIN LEYSHON,

Plaintiff,

v.

Michael Duncan, individual and official
capacity; B. Carlton Terry, individual and
official capacity; Pam Barlow, individual and
official capacity; and Matthew Levchuk,
individual and official capacity,

Defendants.

**DEFENDANTS' FIRST
MOTION FOR EXTENSION OF
TIME TO ANSWER OR
OTHERWISE RESPOND TO
PLAINTIFF'S COMPLAINT**

NOW COMES Defendant Michael Duncan, Senior Resident Superior Court Judge for the 23rd Judicial District of North Carolina, in both his individual and official capacity, B. Carlton Terry, District Court Judge, 22-B Judicial District of North Carolina, in both his individual and official capacity, Pam Barlow, Clerk of Superior Court for Ashe County, North Carolina, in both her individual and official capacity, and Matthew Levchuk, Assistant District Attorney for the 34th Prosecutorial District of North Carolina, in both his individual and official capacity, by and through their undersigned counsel, Elizabeth Curran O'Brien, Special Deputy Attorney General, without waiving any defenses relating to service of process or jurisdiction that may be available under Rule 12 of the Federal Rules of Civil Procedure, to move, pursuant to Federal Rule of Civil Procedure 6(b) and

and Civil Rule 7.1 of the Local Rules of Practice and Procedure for the Western District of North Carolina, for an order extending the time in which she has to file and serve an answer or otherwise respond to the Plaintiff's complaint for thirty (30) days, up to and including, November 23, 2020. In support of this motion, the undersigned shows unto the Court the following:

1. The plaintiff commenced this action *pro se* by filing a complaint on October 1, 2020 [D.E. 1] and caused summons to be issued to all Defendants the same day [D.E. 2].
2. Defendant Barlow received a copy of the complaint via sheriff deputy on October 1, 2020, but informs counsel she did not receive a summons.
3. Defendants Duncan and Levchuk received copies of the summons and complaint via sheriff deputy on October 5, 2020 [D.E. 3, 4].
4. Upon information and belief, Defendant Terry has not been served.
5. The time in which each defendant must file an answer or otherwise respond has not passed.
6. The need for the undersigned to investigate the claims and appropriately analyze and research the allegations raised by the plaintiff prior to responding necessitates additional time. Additionally, the undersigned counsel has had intervening deadlines in other state and federal litigation which has prevented her from completing these tasks within the time allowed to respond.
7. Pursuant to the Honorable Kenneth D. Bell's Standing Order requiring an initial settlement conference in civil cases, 5:19-MC-5, the undersigned is responsible

for initiating communication to arrange the settlement conference mandated by the standing order which should be conducted prior to the filing of an Answer or other response.

8. The plaintiff is proceeding *pro se* and has not provided a phone number or email address, therefore communication can only be effectuated via US Mail.
9. This motion is filed in good faith and for the reasons state herein, and not for the purposes of delay.

WHEREFORE, defendants respectfully move for an order extending the time to answer or otherwise respond to the plaintiff's complaint for an additional thirty (30) days, up to and including November 23, 2020.

Respectfully submitted, this the 15th day of October, 2020.

JOSHUA H. STEIN

Attorney General

/s/ Elizabeth Curran O'Brien

Elizabeth Curran O'Brien
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*Counsel for Defendants Duncan, Terry,
Barlow and Levchuk*

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day electronically filed the foregoing **FIRST MOTION FOR EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFF'S COMPLAINT ON BEHALF OF DEFENDANTS DUNCAN, TERRY, BARLOW AND LEVCHUK** with the Clerk of the court using the CM/ECF system which will send notification of such filing to the parties of record who participate in the CM/ECF system and placed a copy of the same in the U.S. Mail, postage-prepaid, addressed to the following individual:

Curtis Edwin Leyshon
915 North Pine Run Road
Boone, NC 28607
Pro Se Plaintiff

This, the 15th day of October, 2020.

/s/ Elizabeth Curran O'Brien
Elizabeth Curran O'Brien
Special Deputy Attorney General
N.C. Department of Justice